No. 87-1682

IN THE

Supreme Court of the United States

October Term, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

vs.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Does exhaustion of internal union remedies toll the running of the statute of limitations explicated in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983)?

2. Did the Sixth Circuit Court of Appeals and/or the District Court deny the Petitioners' right to procedural due process under the Fifth Amendment to the United States Constitution by failing to decide and/or remand the Petitioners' claims not adjudicated on the merits?

3. Did the Sixth Circuit Court of Appeals err when it held that Defendant Chrysler Corporation did not violate its contractual responsibilities with respect to the Ohio Petitioners' claimed transfer rights?

4. Are Petitioners entitled to a jury trial for causes of action based upon 29 U.S.C. Section 185, 29 U.S.C. Section 159, and/or 29 U.S.C. Section 411, *et seq.*?

PARTIES APPEARING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1. Petitioners Chrysler Workers Association and one hundred and eighty-one separately named individuals who comprise the Ohio and Indiana plaintiffs (also comprising the entire membership of the Chrysler Workers Association), were the plaintiffs before the United States District Court for the Northern District of Ohio, Western Division, and were the appellants before the Sixth Circuit Court of Appeals.

2. The Defendants in the District Court were Chrysler Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local Nos. 371, 1331, 1435, 2075, and 2147, and General Dynamics Land Systems, Inc., f/k/a Chrysler Defense, Inc. The dismissal of General Dynamics by the District Court was not challenged at the Court of Appeals level. Therefore, Chrysler Corporation, the UAW International Union, and the UAW Local Unions were the only appellees before the Court of Appeals. The respondents in the petition *sub judice* are also Chrysler Corporation, the UAW International Union, and the UAW Local Unions.

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PRAYER

Petitioners, Chrysler Workers Association and the individually named plaintiffs, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported as *Chrysler Workers Association, et al. v. Chrysler Corporation, et al.*, 834 F.2d 573 (6th Cir. 1987) (Appendix, p. A1).

The judgment rendered in the United States District Court for the Northern District of Ohio occurred on April 17, 1986, pursuant to an Opinion rendered by the Honorable John W. Potter granting Defendants' motions for summary judgment. The Opinion was unreported and unpublished (Appendix, p. A24).

JURISDICTIONAL STATEMENT

Petitioners' original complaint was an action for legal, equitable, declaratory, and injunctive relief under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. Section 141, *et seq.* Jurisdiction for this action is founded upon 29 U.S.C. Section 185 and Section 187, 28 U.S.C. Section 1331, and 28 U.S.C. Section 1337.

The jurisdiction of the District Court was also invoked pursuant to 29 U.S.C. Section 412 granting the Court jurisdiction for actions alleging violations of 29 U.S.C. Section 411 *et seq.*, known as The Labor Management Reporting & Disclosure Act.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved in the case *sub judice* are the Fifth and Seventh Amendments to the Constitution of the United States, 29 U.S.C. Section 159, 29 U.S.C. Section 185 and 29

U.S.C. Section 411, *et seq.*, and in pertinent part, are set out as follows:

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VII:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

29 U.S.C. Section 159(a):

> (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect:

Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

29 U.S.C. Section 185:

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his

capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U.S.C. Section 411 (a)(1) and (a)(2):

(a)(1) Equal rights

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organizations, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organizations his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

STATEMENT OF THE CASE

INTRODUCTION

Petitioners (hereinafter referred to as plaintiffs), contend that Chrysler will not observe their contractual obligations to plaintiffs by failing to: (1) allow plaintiffs to return to their "home" plants, and (2) honor their considerable Chrysler seniority. It is contended that the UAW has failed to honor its duty to fairly represent its members and has failed to allow the plaintiffs a meaningful vote in violation of its own constitution and bylaws.

The one hundred and eighty-one individually named plaintiffs, all members of the Chrysler Workers Association, are present or former employees of the Lima, Ohio Tank plant currently owned by General Dynamics Land Systems, Inc. There are two distinct classes of plaintiffs: Ohio plaintiffs and Indiana plaintiffs. These two classes of plaintiffs have the same allegations regarding the actions of the Union and Company; but the facts regarding each are distinct. To best understand the "Questions Presented For Review", a brief outline of the two separate groupings of plaintiffs must be presented.

OHIO PLAINTIFFS

With the slow down in the automotive industry in 1979, Chrysler was forced to indefinitely lay off thousands of employees nationwide. However, Chrysler's need for employees increased during this time at certain non-automotive plants, one such plant being the Lima Tank Plant. The transfer of laid off Ohio Chrysler workers to plants with work was governed by the 1979 Collective Bargaining Agreement between Chrysler

Corporation and the United Auto Workers International Union (hereinafter referred to as the 1979 CBA). Section 65, as amended, of the 1979 CBA, subtitled "Work Opportunity for Laid Off Employees", governed the transfer of the Ohio Chrysler plaintiffs, and also governed the eventual return of said workers to their respective "home" plants.[1] Of crucial importance to these displaced employees was their right to return to their "home" plants since their plant seniority (which governed bidding rights for jobs, retirement and vacations) was dictated by their "home" plant status. While at the Tank Plant, the plaintiffs were placed at the bottom of the seniority list. Most of the plaintiffs enjoyed more than ten (10) years worth of seniority at their "home" plants.

Some Ohio plaintiffs had been employed by Chrysler Corporation at the Toledo Machining Plant in Perrysburg, Ohio. Pursuant to a letter of understanding (Ohio Letter) which modified Section 65 of the 1979 CBA, these employees transferred to the Tank Plant in Lima, then owned by Chrysler Defense, Inc., a wholly owned subsidiary of Chrysler Corporation. Pursuant to the "Ohio Letter", these employees would be allowed to return to their "home" plant in Perrysburg before Chrysler Corporation could begin to hire any new employees off the street for this plant.

The remaining Ohio plaintiffs were employed by Chrysler Corporation in Van Wert, Ohio, in 1979. The situation of the Van Wert, Ohio plaintiffs parallels that of the Perrysburg, Ohio plaintiffs with the exception that the transfer back of these plaintiffs was dictated not by the "Ohio Letter", but an agreement referred to as the

[1] As will be explained below, Section 61 of the 1979 CBA governed the recall of the Indiana plaintiffs.

"Sadie Hawkins Day" agreement. This agreement was also a modification of Section 65 of the 1979 CBA, and was a special provision whereby once each year, on a selected date, work opportunity plaintiffs, such as the Van Wert plaintiffs, were afforded an opportunity to sign up to return to their "home" plant. The Van Wert, Ohio plaintiffs signed up to return to their home plants, but Chrysler in Van Wert, Ohio was not recalling any employees until some time later.[2]

INDIANA PLAINTIFFS

The Indiana plaintiffs did not transfer to the Lima Tank Plant, and were not working at the Tank Plant pursuant to Section 65 of the 1979 CBA, or pursuant to any supplemental modification of Section 65. These workers were simply laid off from the New Castle, Indiana Chrysler plant. The Indiana plaintiffs then applied at the Lima Tank Plant and were hired in off the street as new employees. These plaintiffs argue that pursuant to Section 61 of the 1979 CBA, entitled "Layoff Procedures—Indefinite Layoffs", they should be recalled in line with their seniority irrespective of any work opportunity agreements or amendments.

The New Castle, Indiana Chrysler plant began recalling its laid off employees in June of 1982. The Indiana plaintiffs were passed over for recall in line with their seniority. It was Chrysler and the UAWs' position that these plaintiffs had to wait until the New Castle plant began hiring off the street, pursuant to the "Indiana Letter".[3] The Indiana plaintiffs filed grievances

[2] Once employees make the election to return, that option remains open until the home plant starts hiring.

[3] The "Indiana Letter" is identical to the "Ohio Letter"; however, it only applies to employees who are transfered pursuant to Section 65 of the Collective Bargaining Agreement, not new hires.

protesting the fact that Chrysler had passed them over for recall, and that the "Indiana Letter" was not applicable to their situation. The Indiana plaintiffs utilized the internal appeals procedure for over two years before filing the present law suit.

SALE OF LIMA, OHIO TANK PLANT

In March of 1982, Chrysler Corporation sold all the stock of Chrysler Defense, Inc., to General Dynamics. The subsidiary corporation's name was subsequently changed to General Dynamics Land Systems, Inc. (GDLS). Representatives of the UAW and GDLS have testified that GDLS agreed to abide by the terms of the 1979 CBA, and did not alter plaintiffs' seniority or recall rights that existed under the 1979 CBA.

On May 18, 1982, a "letter of understanding" was entered into between GDLS and the UAW with regard to the status of those employees, including the plaintiffs, working at plants under the Work Opportunity Agreement (Section 65 of the 1979 CBA) that desired to return to their "home" plants. Both GDLS witnesses and UAW witnesses have testified that it was not the intent or the effect of said "letter of understanding" to change or in any way alter or extinguish the plaintiffs' seniority rights that had existed under the 1979 CBA.

On June 7, 1982, a second "letter of understanding" was entered into, only this time between Chrysler and the UAW. This second "letter of understanding" was virtually identical in content to the May 18, 1982 letter between GDLS and the UAW. Again, all the testimony by both Chrysler and UAW witnesses was that it was not the intent of this second "letter of understanding" to alter the rights of the plaintiffs, but only intended to

clarify the 1979 CBA as it applied to individuals working at the Lima Tank Plant pursuant to Section 65 of said agreement.

The UAW held a meeting in early July, 1982, to explain to its membership the effect of the sale of Chrysler Defense, Inc. to General Dynamics. At this meeting, no mention was made of the May 18th or the June 7th "letter(s) of understanding". Also at this meeting, no one informed the plaintiffs that their seniority rights at their "home" plants or their ability to return to their "home" plants had been altered in any way as a result of the sale.

After the sale of Chrysler Defense, Inc., to General Dynamics, the Ohio plaintiffs approached Union and Company officials requesting information as to when they would be recalled to their "home" plants. Neither Union nor Chrysler officials would give these plaintiffs any information regarding their recall rights. Anxious to get answers to their inquires, plaintiffs formed an association called the Full Seniority Committee, the purpose of which was to determine the status of their seniority and/or recall rights. On November 11, 1983, through this association's attorney, the UAW informed the plaintiffs of the existence of the May 18th and June 7th "letter(s) of understanding", and that the plaintiffs' seniority and/or recall rights had been eliminated.

Upon receipt of this letter, the Ohio plaintiffs filed an appeal with the International Executive Board, pursuant to the International Constitution, which was denied as untimely.[4]

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[4] By this time, the Indiana plaintiffs had filed grievances over a year earlier, and had started to exhaust their internal union appeal procedures.

The Ohio plaintiffs also filed grievances pursuant to the 1979 CBA (in addition to, and separate from the grievances filed earlier by the Indiana plaintiffs). The Ohio plaintiffs subsequently received notice from the International UAW informing them that the UAW would not process those grievances. A second association was formed, the Plaintiff Chrysler Workers Association. This Association, and the individually named plaintiffs, including both the Ohio and Indiana plaintiffs, filed the present lawsuit.

The plaintiffs filed a timely complaint with the District Court on March 23, 1984. On April 16, 1986, the District Court granted motions for summary judgment for Defendants Chrysler, the International UAW, the UAW Locals, and General Dynamics, based on statute of limitation grounds, and specifically did not rule on any of the merits of the plaintiffs' causes of action. In the same Opinion, the District Court granted the Unions' motion to strike plaintiffs' jury demand.

On November 25, 1987, the Sixth Circuit affirmed the District Court with regard to the dismissal of the Ohio plaintiffs' cause of action based on 29 U.S.C. §185, but refused to affirm the District Court on its statute of limitations analysis. However, the Sixth Circuit declined to remand the two undecided causes of action based on 29 U.S.C. §§159 and 411, *et seq.*, for determination on the merits. Finally, the Sixth Circuit affirmed the District Court as to the barring of the Indiana plaintiffs causes of action based on the statute of limitations.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE SIXTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE VIEW EXPRESSED BY OTHER CIRCUIT COURTS THAT THE STATUTE OF LIMITATIONS EXPLICATED IN *DELCOSTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS,* 462 U.S. 151 (1983), SHOULD BE TOLLED PENDING AN EMPLOYEE'S EXHAUSTION OF INTERNAL UNION GRIEVANCE REMEDIES.

It is requested that this Court resolve the conflict between the Sixth Circuit and other U.S. Circuit Courts that have held that the statute of limitations explicated in *DelCostello v. Int'l Brotherhood of Teamsters,* 462 U.S. 151, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983) should be tolled pending an employee's exhaustion of internal union grievance remedies.

If the Court does not resolve this conflict, it places both plaintiffs *sub judice* and future litigants in the following dilemma: if employees do not exhaust internal union remedies, they can be certain that the union will argue that this requires dismissal of the action; on the other hand, if the employees do pursue those remedies, they know that the union will argue that exhaustion would have been futile, and therefore that the statute of limitations should not be tolled during the time it took the employees to exhaust. See *Frandsen v. BRAC,* 782 F.2d 674 (7th Cir. 1986). This "Catch-22" syndrome has been specifically noted by the Seventh Circuit, in *Frandsen,* and in the Eleventh Circuit in *Hester v. Int'l Union of Operating Engineers, et al.,* 818 F.2d 1537 (11th Cir. 1987).

Neither the District Court nor the Sixth Circuit, in the case *sub judice,* have attempted to rationalize their applying the *DelCostello* statute of limitations rule to the Indiana plaintiffs in spite of the fact that the Indiana plaintiffs filed their complaint with the District Court within six months of receiving a decision from the UAW International Executive Board.[5] In fact, plaintiffs' complaint, filed on March 24, 1984, was filed prior to the Public Review Board's decision, the final step in the UAW internal grievance process. The position of the Sixth Circuit in not allowing the Indiana plaintiffs an opportunity to exhaust these internal remedies places these plaintiffs in the aforementioned "Catch-22" situation. Accordingly, this Court should grant Certiorari to resolve this conflict.

In petitioners' "Statement of the Case", it was stated that the Indiana plaintiffs were hired "off the street" by Chrysler to work in the Lima Tank Plant. They were not transferred pursuant to Section 65 of the 1979 CBA. When the New Castle, Indiana Chrysler plant began to recall workers in June of 1982, these plaintiffs fully expected to be recalled pursuant to their level of seniority. When these plaintiffs discovered they had been passed over for recall, in violation of the 1979 CBA, they initiated the proper grievance procedures.

In compliance with Section 22, *et seq.* of the 1979 CBA, entitled "Grievance Procedure", the New Castle plaintiffs filed a written grievance with their UAW Local on August 1, 1982. This grievance was eventually withdrawn by the Union, and on February 22, 1983, the Indiana plaintiffs appealed this withdrawal to the International Executive Board of the UAW. This appeal was subsequently denied on December 1, 1983 (Appendix, p. A68).

[5] Appeal to the International Executive Board is only the second step in the internal union appeal process.

In response to the defendants' motions for summary judgment, plaintiffs suggested that the statute of limitations as to the Indiana plaintiffs should be tolled for the time period in which said plaintiffs pursued their internal union remedies. In response to this argument, the District Court held the following:

> Further, plaintiffs' filing of a grievance did not toll the running of the applicable statute of limitations period. See, e.g., *Vallone*, 755 F.2d at 522.

Chrysler Workers Assoc., No. 84-7273 unpublished op. at 27 (See Appendix p. A62). A review of the decision in *Vallone v. Local Union No. 705, Int'l Brotherhood, et al.*, 755 F.2d 520 (7th Cir. 1985) reveals the inappropriateness of the District Court's reliance on said case. In *Vallone*, the Seventh Circuit refused to toll the statute of limitations because the "grievances which plaintiffs argue[d] tolled the statute of limitations were based on individual pay claims and did not address the claims raised in this suit." *Vallone*, 755 F.2d at 522. The situation in *Vallone* is opposite to the case *sub judice*. It is apparent from the depositions and affidavits filed with the District Court that the Indiana plaintiffs did file suit on the same claims that were raised in their grievances. Thus, the District Court's reliance on *Vallone* was inappropriate. It should also be noted that the dicta in *Vallone* that the District Court apparently relied on has been refuted by its own Circuit Court in *Frandsen*, 782 F.2d at 682.

The Sixth Circuit's response to petitioners' appeal on this issue, also relying on *Vallone*, was that

> it was clear after September 14, 1982, that neither party defendant, claimed by plaintiffs to be responsible to them, recognized a recall right to the New Castle, Indiana Chrysler plant at any time less than six months before this suit was filed.

Chrysler Workers Assoc., 834 F.2d at 581 (Appendix, p. A18). The Sixth Circuit also held that after September 14, 1982, the Indiana plaintiffs were aware that neither the Union nor Chrysler recognized the plaintiffs' grievance. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix. p. A18). As such, the Sixth Circuit suggests that from that date, the statute of limitations began to run.

The Sixth Circuit implied that the Indiana plaintiffs, in 1982, were aware that the Union was not going to process their grievance. This knowledge should not prohibit the Indiana plaintiffs from exhausting the internal union grievance procedures available to them. Such awareness is the case every time a union withdraws a grievance. Unless this conflict is resolved, the Indiana plaintiffs, and future litigants, are caught in the "Catch-22" situation previously discussed.

It is plaintiffs' contention that the decisions of the Sixth Circuit Court of Appeals and the District Court fail to address this tolling issue, and is in direct conflict with other U.S. Circuit Courts and contrary to this Court's holding in *Clayton v. Automobile Workers*, 451 U.S. 679 (1981).

In *Clayton*, the defendants contended that an employee must exhaust the internal union appeals procedures established by his union's constitution before he may maintain his suit under 29 U.S.C. §185 (Section 301 of the LMRA). As a general rule, national labor policy encourages private resolution of labor disputes. The *Clayton* Court, however, provided certain exceptions to this policy:

> However, we decline to impose a universal exhaustion requirement lest employees with meritorious §301 claims be forced to exhaust themselves and their resources by submitting their

> claims to potentially lengthy internal union procedures that may not be adequate to redress their underlying grievances.

Clayton, 451 U.S. at 689. This language suggests that it was this Court's intention to provide the element of futility as a protection to the employee, not to the union. It should be noted that neither defendant has argued, nor has the Sixth Circuit or the District Court found, that the internal appeals in the case *sub judice* were futile. Because there is no finding of futility in the case *sub judice*, exhaustion of internal union remedies is required.

In *Frandsen*, *supra*, the Seventh Circuit discussed the tolling of the statute of limitations while exhausting internal union remedies, and in said discussion held the following:

> [D]uring the pendency of those union procedures, the six-month statute of limitations is tolled, to commence running only when the union procedures are exhausted.

Frandsen, 782 F.2d at 681.

The *Frandsen* Court went one step further, however, when it outlined the "dilemma" that was created by the issue of tolling. The *Frandsen* Court stated the following:

> The question remains, however, how to handle the employee who pursues union procedures that are futile. Should the statute of limitations be tolled where *Clayton* relieves the employee of the exhaustion requirement? The existence of this unresolved question leaves the injured employee with a *dilemma*. If the employee does not exhaust internal union remedies, he can be certain that the defendant union will argue that this requires dismissal of the action. On the other hand, if the employee does pursue those remedies, he knows that the union will argue that exhaustion would have

> been futile, and therefore that the statute of limitations should not be tolled during the time it took the employee to exhaust. This is the "Catch-22" that Frandsen alleges his is caught in. *He argues that under the district court's holding, if Clayton doesn't get him, DelCostello will.* (Emphasis added.)

Frandsen, 782 F.2d at 681. In response to this "dilemma", the *Frandsen* Court held the following:

> [T]he *DelCostello* statute of limitations is tolled by the pursuant of internal union remedies, even where those remedies are ultimately determined to have been futile.

Frandsen, 782 F.2d at 681.

Other U.S. Circuit Courts have also recognized the need for this protection. See *Zuniga v. United Can Company, et al.*, 812 F.2d 443 (9th Cir. 1987); *Hester v. International Union of Operating Engineers, et al., supra.*

In the case *sub judice*, the District Court, and the Sixth Circuit, have failed to address these important protections recognized not only by this Court in *Clayton*, but also the Seventh, Ninth and Eleventh U.S. Circuit Court of Appeals. The result of this is the denial of the right to pursue internal union grievance procedures recognized as a basic protection by this Court.

We urge this Court to resolve this serious conflict. If not resolved, litigants will be required to unnecessarily initiate law suits while pursuing internal union remedies, adding to already over-burdened court dockets; and further, will require such litigants, both plaintiffs and defendants, to exhaust themselves and their resources, thus violating the spirit and intent of *Clayton*.

II. PETITIONERS' WERE DENIED FIFTH AMENDMENT-PROCEDURAL DUE PROCESS BY THE SIXTH CIRCUIT COURT OF APPEALS WHEN IT FAILED TO ADJUDICATE OR REMAND TO THE DISTRICT COURT THE PLAINTIFFS' CAUSES OF ACTION FOR BREACH OF DUTY OF FAIR REPRESENTATION, PURSUANT TO SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SECTION 159, AND THE PLAINTIFFS' RIGHT TO VOTE, PURSUANT TO SECTION 101 OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT, 29 U.S.C. SECTION 411, *ET SEQ.*

Plaintiffs respectfully submit that the Sixth Circuit's decision of November 25, 1987 left unadjudicated plaintiffs' causes of action for breach of duty of fair representation founded on Section 9 of the National Labor Relations Act, 29 U.S.C. §159 (separate and apart from any §301 breach of contract claim), and the plaintiffs' right to vote, pursuant to Section 101 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411, *et seq.*

In determining that Chrysler had not breached the 1979 CBA, and in finding that the plaintiffs had no cause of action under 29 U.S.C. §185, the Sixth Circuit held that:

> Whether the Union constitution bylaws may require this submission of an agreement to its members for approval is another matter.

Chrysler Workers Assoc., 834 F.2d at 582 (Appendix, p. A21). This undecided question is at least part of the basis for the two remaining causes of action that remain unadjudicated. The Sixth Circuit's *sua sponte* dismissal of these two causes of action without any form of hearing on the merits, and without giving plaintiffs the opportunity to object to said *sua sponte* dismissal, violates the basic protections guaranteed by the Fifth

Amendment to the Constitution of the United States, and further, goes against this Court's ruling in *Matthews v. Eldridge*, 424 U.S. 319 (1976). *Also see Brock v. Roadway Express, Inc.*, _____ U.S. _____, 107 S. Ct. 1740, 1747 (1987).

The plaintiffs, *inter alia*, had alleged that:

> The Plaintiffs learned, however, that the Defendant, International Union, and/or Defendant, Local Unions, had, subsequent to the sale, of Chrysler Defense, Inc., unilaterally abrogated their rights to return to work at other Chrysler plants, in violation of the existing labor contracts, local bylaws and the international constitution, and in violation of the Defendants' duty of fair representation to the individually named Plaintiffs. The Defendant, International Union, and the Defendant, Local Unions, did not inform the named Plaintiffs of the new secret agreements or allow them to ratify those agreements, which extinguished their right to return to their home plants, as set forth hereinabove.

Plaintiffs' Second Amended Complaint, filed April 17, 1984, paragraph 13. In addition, the plaintiffs had alleged that:

> The aforesaid supplemental agreements were entered into by the International Union and the Defendant, Locals, in violation of the Constitution of the International Union United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., adopted at Anaheim, California, June, 1980, and the bylaws of the Defendant, Local Unions, inasmuch as the Plaintiffs were neither informed of the existence or allowed to ratify those agreements, a right guaranteed under the Constitution of the International Union and the Locals' bylaws. The acts of the Defendant, International Union, and the Defendant, Locals, set forth hereinabove, constitute violations of 29 U.S.C. (A) Sec. 411, et sequa, by denying Plaintiffs, as a

> group and individually, equal rights and privileges within the Defendant, Labor Organizations, to participate in and be protected by the Defendant, Labor Organizations.

Plaintiffs' Second Amended Complaint, filed April 17, 1984, paragraph 20. Neither the District Court, nor the Sixth Circuit, considered or rendered a final determination on the merits of the two remaining claims of plaintiffs, as outlined above.

The District Court held:

> Finding the Statute of Limitations issue to be dispositive of this case, the Court does not substantively reach the merits of the remaining issues presented *sub judice*.

Chrysler Workers Assoc., No. 84-7273, unpublished op. at 20 (Appendix, p. A53).

The Sixth Circuit found that reliance upon the statute of limitations for summary judgment was questionable and not warranted under the facts presented. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix, p. A20). Rather, the Sixth Circuit found that the plaintiffs' seniority rights were eliminated by the unratified May and June, 1982 "letter(s) of understanding", and accordingly held that the plaintiffs had no cause of action under §301 of the Labor Management Relations Act, 29 U.S.C. §185 because there was no breach of contract.

Plaintiffs' claims founded on 29 U.S.C. §159 do not require an accompanying breach of contract claim. Both this Court and the Sixth Circuit Court of Appeals have recognized that an employee can maintain an action against his union for breach of fair representation, pursuant to 29 U.S.C. §159, whether or not there is a separate cause of action for breach of contract under L.M.H.A. §301 (29 U.S.C. §185). See *Amalgamated Association etc. v. Lockridge*, 403 U.S. 274 (1971); and

Storey v. Teamsters Local 327, 759 F.2d 517 (6th Cir. 1985). This Court, in *Lockridge,* held that a breach of the union's duty of fair representation is actionable and not pre-empted by the NLRB:

> . . . even if the conduct complained of was arguably protected or prohibited by the National Labor Relations Act and whether or not the lawsuit was bottomed in a collective bargaining agreement.

Lockridge, 403 U.S. at 299. Because the Sixth Circuit was unwilling to embrace the District Court's statute of limitations rationale, these two remaining causes of action of the plaintiffs have not been time-barred and therefore remain to be adjudicated on the merits.

In *Matthews, supra,* this Court held the following:

> This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest .... The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545 (1965).

Matthews, 424 U.S. at 333. Also see *Tingler v. Marshall,* 716 F.2d 1109 (6th Cir. 1983). In *Tingler,* the Sixth Circuit held that a Court, when faced with a complaint which it believes may be subject to dismissal, must give the plaintiff a chance to either amend the complaint or respond to the notice of intended *sua sponte* dismissal, and if said complaint is dismissed, said court must state its reasons for the dismissal. The Sixth Circuit, in the case *sub judice,* has failed to do either.

The Sixth Circuit has simply refused to allow the plaintiffs the opportunity to be heard on the above-mentioned causes of actions. In a final attempt to have these issues adjudicated, plaintiffs filed a petition for rehearing en banc with the Sixth Circuit to, among other things, decide said issues that had been overlooked. On

January 19, 1988, the Sixth Circuit denied plaintiffs' petition without reason (Appendix, p. A67).

The District Court and the Sixth Circuit Court of Appeals have failed to explain any reasons for dismissal of the two remaining causes of action. This failure by the Sixth Circuit to properly address or remand causes of action properly pled, violates one of the most basic protections of a litigant. Clarification by this Court is critical for both the plaintiffs *sub judice* and future litigants. Plaintiffs urge this Court to accept this petition and review the procedure that deprives plaintiffs of property rights guaranteed by the United States Constitution without a hearing or determination on the merits.

III. THE SIXTH CIRCUIT COURT OF APPEALS WAS IN ERROR WHEN IT HELD THAT DEFENDANT CHRYSLER CORPORATION DID NOT VIOLATE ITS CONTRACTUAL RESPONSIBILITIES WITH RESPECT TO THE OHIO PLAINTIFFS' CLAIMED TRANSFER RIGHTS.

The Sixth Circuit held that "Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights," and based on that finding, plaintiffs had no cause of action under §301. *Chrysler Workers Assoc.*, 834 F.2d at 582 (Appendix, p. A22). The Sixth Circuit is in direct conflict with other U.S. Circuit Courts with regard to its rationale for holding that Chrysler did not breach its contract with the UAW.

In affirming the District Court's granting of summary judgment as to the plaintiffs' 29 U.S.C. §185 cause of action in favor of the defendants, the Sixth Circuit based its decision on an issue that had not been argued or briefed by any of the parties—including Chrysler. The Sixth Circuit held that the June 7, 1982 "letter of understanding" was a "binding agreement" between Chrysler and the UAW that eliminated the

plaintiffs' Chrysler seniority effective September 14, 1982. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix, p. A20).

There are two issues that must be considered before the Court can find the "letter of understanding" is a "binding agreement" having any particular effect:

1. did the union have the authority to make such an agreement; and

2. was it the intent of the makers of that "agreement" to eliminate the Chrysler seniority of the plaintiffs.

UAW'S AUTHORITY TO BIND ITS MEMBERS

The plaintiffs urge this Court to grant this Petition to resolve the conflict in the Circuit Courts of Appeal as to whether a union has the authority to bind its membership where the proposed agreement has not been ratified and the applicable constitution and bylaws of the union require such ratification. The Sixth Circuit held that:

> Whether the Union constitution or by-laws may require this submission of an agreement to its members for approval is another matter. In any event, we find that *Chrysler had a right to rely upon its agreement with the Union absent clear notice that the Union was acting in bad faith* against the interests of its members. There is no such indication here. (Emphasis added).

Chrysler Workers Assoc., 834 F.2d at 582 (Appendix, p. A21).

Other U.S. Circuit Courts have held that the parties wanting to have the contract enforced are required, based on federal agency principles, to show "apparent authority".

The First Circuit, in *Moreau v. James River-Otis, Inc.*, 767 F.2d 6 (1st Cir. 1985), held that:

> Apparent authority cannot be established merely by showing that the agent claimed authority or purported to exercise it, but must be established by proof of something said or done by the principal on which a third person reasonably relied. The burden of proving apparent authority rests on the party asserting that the act was authorized.

Moreau, 767 F.2d at 9, 10.

In addition, the Third Circuit, in *Goclowski v. Penn Central*, 571 F.2d 747 (3rd Cir. 1978) held that:

> . . . [A]n employer has no right to rely on the appearance of authority of the bargaining agent if it has knowledge to the contrary. This is an elementary principle of the law of agency.

Goclowski, 571 F.2d at 759.

Because none of the parties argued that the "letter(s) of understanding" eliminated the plaintiffs' seniority/home plant rights, neither the District Court, nor the Sixth Circuit considered whether Chrysler had actual knowledge of the Unions' lack of authority. The Sixth Circuit's view that the plaintiffs have to show "clear notice" of "bad faith" in order to invalidate the "letter(s) of understanding" is in direct conflict with the views expressed by the First and Third Circuits. The decision in the case *sub judice* is even at odds with prior decisions of the Sixth Circuit that required the employer to show apparent authority to enforce such an agreement. See *Central States S.E. and S.W. Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1112 (6th Cir. 1986).

The Sixth Circuit Did Not Consider the Intent of the Drafters of the Letters of Understanding

The Sixth Circuit, in the case *sub judice*, held that:

> Plaintiffs argue that the 1982 letter agreements were not intended to alter the 1979 CBA. They did,

> however, clearly terminate any transfer right from the Lima GDLS plant to a Chrysler home plant by September 14, 1982.

Chrysler Workers Assoc., 834 F.2d at 580 (Appendix, p. A17). The Court did not consider the fact that all of the defendants' witnesses testified that the 1982 "letter(s) of understanding" were not intended to eliminate, or in any way alter the plaintiffs' right to transfer back to their home plants.

This Court, in *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), held the following:

> . . . "[I]t is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages.

United Steelworkers, 363 U.S. at 579. The Sixth Circuit, in *UAW v. Yard-Man*, 716 F.2d 1476 (6th Cir. 1983), has also stated that:

> The intended meaning of even the most explicit language can, of course, only be understood in the light of the context which gave rise to its inclusion.

Yard-Man, 716 F.2d at 1479. See also *Oddie v. Ross Gear & Tool Co.*, 305 F.2d 143, 151 (6th Cir. 1962), wherein the Court held that in the construction of contracts, the court must give great weight to the construction which the parties themselves have given to the contract as shown by their actions thereunder.

Because the Sixth Circuit was in effect ruling on defendants' motion for summary judgment,

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Adickes,* 398 US, at 158-159, 26 L Ed 2d 142, 90 S Ct 1598.

Anderson v. Liberty Lobby, Inc., _____ U.S. _____, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202, 217 (1986).

The Sixth Circuit did not even consider the evidence indicating the intent of the parties (the defendants' own witnesses, not the plaintiffs') when rendering its ruling regarding the effect of the June 7, 1982 "letter of understanding."

We urge this Court to accept this Petition to resolve the conflict that exists regarding whether unions have apparent authority to bind its members in the absence of a "clear notice" of "bad faith"; and to resolve the issue of whether the Court can ignore the intent of the authors of a collective bargaining agreement.

IV. PLAINTIFFS ARE ENTITLED TO A JURY TRIAL UNDER §301 OF THE LABOR MANAGEMENT RELATIONS (29 U.S.C. §185), FOR THE PLAINTIFFS' FAIR REPRESENTATION CLAIM PURSUANT TO 29 U.S.C. §159, AND/OR FOR PLAINTIFFS' RIGHT TO VOTE, PURSUANT TO 29 U.S.C. §411, *ET SEQ.*

The right to a jury trial is guaranteed by the Seventh Amendment and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. *Dimick v. Schiedt,* 293 U.S. 474, 486 (1935).

It is within this framework that the right to a jury trial in actions invoking 29 U.S.C. §159, 29 U.S.C. §185, and 29 U.S.C. §411 should be viewed.

In *Curtice v. Loether, et al.*, 415 U.S. 189 (1974), this Court held the following:

> Whatever doubt may have existed should now be dispelled. The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand if the statute creates legal rights and remedies enforceable in any action for damages in the ordinary Courts of law.

Curtice, 415 U.S. at 194.

The Seventh Amendment guarantees a trial by jury in "suits at common law where the value of the controversy shall exceed $20." The merger of law and equity, accomplished by the adoption of the Federal Rules of Civil Procedure in 1938, made the scope of the right to a jury difficult to determine in cases which contain both legal and equitable issues. Citing *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500 (1959), and *Dairy Queen, Inc. v. Wood, U.S. District Judge, et al.*, 369 U.S. 469 (1962), the Supreme Court in *Ross, et al. v. Bernhard, et al.*, 396 U.S. 531 (1970), stated:

> Where equitable and legal claims are joined in the same action, there is a right to a jury trial on the legal claims which must not be infringed either by trying the legal claims as incident to the equitable ones or by a court trial existing of a common issue existing between the claims. The Seventh Amendment question depends on the nature of the issue to be tried rather than the character of the overall action.

Ross, 396 U.S. at 537, 538.

Applied to the cases arising under 29 U.S.C. §159, §185 and §411, it is necessary to determine the nature of the cause of action to decide if the Seventh Amendment

right attaches. Even if the overall character of this particular case is equitable, the right to a jury exists if these is an issue that is legal in nature. *Ross, supra,* provides a three prong test to determine the "legal" nature of an issue. It is necessary to consider "first, the pre-merger custom with reference to such questions; second, the remedy sought; and third, the practical abilities and limitations of juries." *Ross,* 396 U.S. at 538, note 10.

In determining the pre-merger custom, when a suit is brought under a statutory right of action, it is appropriate to determine the nature of the issue presented by recognizing an analogy to a common law cause of action. *Curtice.*

In a Hybrid §301 action, the plaintiff's suit against his employer is for breach of the collective bargaining agreement, which is merely a breach of a contract claim, of which there was a cause of action clearly recognized at common law, and of which there is a close and obvious analogy. *DelCostello.* The breach of a contract claim is legal in nature and one historically triable to a jury. *Cox v. C.H. Masland & Sons, Inc.,* 607 F.2d 138 (5th Cir. 1979).

The plaintiff's suit against the union is for breach of the duty of fair representation. While there was no pre-merger custom with respect to an exclusive bargaining agent's duty of fair representation, because the duty did not exist prior to adoption of the NLRA in 1947, a breach of the duty of fair representation has been characterized as a common law tort, or contract action seeking redress for breach of a legal duty. *Sanderson v. Ford Motor Company,* 483 F.2d 102, 114 (5th Cir. 1973); *Cox, supra; Minnis v. UAW, et al.,* 531 F.2d 850 (8th Cir. 1975); *Butler v. Local Union 823, etc.,* 514 F.2d 442 (8th Cir. 1975); and *De Arroyo, et al. v. Sindicato De Trabajadores Packinghouse, AFL-CIO, et al.,* 425 F.2d 281 (1st Cir. 1970), *cert. denied,* 400 U.S. 877 (1970).

The Sixth Circuit Court of Appeals also analogized the duty of fair representation claims to common law tort claims. *Pitts v. Frito-Lay, Inc.*, 700 F.2d 330, 334 (6th Cir. 1983); *Smart v. Ellis Trucking Company, Inc.*, 580 F.2d 215 (6th Cir. 1978). Because plaintiffs' cause of action is essentially one in tort, any legal relief that the plaintiffs are entitled to thereunder entitles plaintiffs to a trial by jury.

The District Court further found that suits brought against a union for breach of the duty of fair representation is one that is traditionally applied from the NLRA, 29 U.S.C. §159(a), of which Congress has not specified what remedies are available resulting in a judicially created implemented remedial scheme for a judicially implied cause of action. *Chrysler Workers Assoc.*, No. 84-7273, unpublished op. at 8 (Appendix, p. A35).

The District Court acknowledged that plaintiffs seek lost wages, lost benefits, lost seniority rights, declaratory and injunctive relief, damages for severe mental and emotional stress, punitive damages, and such other and further relief that the trial court deemed just and equitable. The District Court also acknowledges that the plaintiffs' claim is a request for remedial relief: the right to return with full seniority to "home" plants. The District Court found that plaintiffs' claims for money damages were merely incidental to the equitable remedial relief sought. *Chrysler Workers Assoc.*, No. 84-7273, unpublished op. at 11 (Appendix, p. A39).

The District Court's finding that the relief sought by plaintiffs is basically equitable ignores that fact that plaintiffs are seeking money damages for severe mental and emotional distress, and for travel expenses because of the long distances between plaintiffs' home plants and the Lima Tank Plant. The District Court appears to be minimizing the monetary relief sought by the plaintiffs.

However, it is not the amount of the legal relief sought compared to the equitable relief that determines the plaintiffs' right to jury, nor is it determinative whether or not the legal or equitable relief is intertwined.

The final prong of the *Ross* test takes into consideration practical abilities and limitations of the juries. District Court decisions which have addressed this issue are in accord. *Rowan v. Howard Sober, Inc.*, 384 F. Supp. 1121, 1125 (E.D.Mich. 1974); *Kinzel v. Allied Supermarkets, Inc.*, 88 F.R.D. 360, 364 (E.D.Mich. 1980); *Oil, Chemical and Atomic Workers International Union, Local 4-23 v. Texaco, Inc.*, 88 F.R.D. 86, 89 (D.C. Tx., 1980).

Every Circuit Court of Appeal that has considered this issue has found that plaintiffs are entitled to a jury trial. *De Arroyo, supra; Sanderson, supra;* and *Butler, supra.* Plaintiffs urge this Court to grant this Petition so as to address such a fundamental issue, and to protect those rights as guaranteed by the Seventh Amendment of the U.S. Constitution.

CONCLUSION

For all of the above reasons, the Petition for the Writ of Certiorari should be granted.

Respectfully submitted,

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